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HAROLD B. WILLEY

IN THE

Supreme Court of the United States

October Term, 1954

Misc. No. 624

JAMES HENRY FORD, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR DISTRICT OF COLUMBIA IN OPPOSITION

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OPINIONS BELOW

The opinion of the Municipal Court of Appeals for the District of Columbia is reported at 102 A. 2d 838. The opinion of the United States Court of Appeals for the District of Columbia Circuit is reported at ___ U. S. App. D. C. ___, 219 F. 2d 759. Its order denying petition for rehearing in banc appears in the transcript of record from the Muni-

cipal Court of Appeals, a copy of which appears at page 10 of the Appendix to petitioner's brief.

JURISDICTION

The judgment of the Juvenile Court of the District of Columbia was entered on September 21, 1953 (App'n't. 4).[1] The judgment of the Municipal Court of Appeals for the District of Columbia was entered February 25, 1954 and appears at page 12 of petitioner's brief. The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered February 17, 1955 and appears at page 11 of petitioner's brief, and its order denying petition for rehearing in banc was entered March 29, 1955 and appears at page 10 of petitioner's brief. The petition for a writ of certiorari was filed April 22, 1955, and the jurisdiction of this Court is invoked under the provision of Title 28 U. S. C. § 1254.

QUESTION PRESENTED

In a proceeding under the Act of Congress "Relating to Children Born Out of Wedlock"[2] in the District of Columbia, petitioner was found by a jury to be the father of three children born out of wedlock and an order was entered requiring him to support the children. At the commencement of the proceeding the court outlined the purpose of the Act and, at the conclusion thereof, the court, not having been requested so to do, did not instruct the jury respecting petitioner's failure to take the stand in his own defense. In the opinion of the respondent, the question presented is:

Whether this is a proper case for the exercise of the jurisdiction of the Supreme Court to review on writ of certiorari, since the matters involved arose out of the enforcement of a law of purely local application.

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[1] (App'nt.) refers to appendix to petitioner's brief below.

[2] Public Law 917, 81st Congress, 2d Session (64 Stat. 1240), Title 11, Chapter 9, D. C. Code, 1951 Edition, Supp. III.

STATUTES INVOLVED

Act of Congress "Relating to Children Born out of Wedlock," Approved January 11, 1951, 64 Stat. 1240, Chap. 1225, § § 3, 4, 10, and 11 (Title 11, Chapter 9, §§ 951, 952, 958, 966, D. C. Code, 1951 Edition, Supp. III).

Act of Congress approved April 1, 1942, 56 Stat. 195, Chap. 207 §§ 7, 8, (Title 11, Chapter 7, §§ 772 (a), (c) and 773, D. C. Code, 1951 Edition).

RULES OF COURT INVOLVED

Rules Regulating Practice Before the Juvenile Court of the District of Columbia, Rules I and X.

The pertinent provisions of the statutes involved and the rules of court involved are set forth in the appendix hereto.

STATEMENT OF THE CASE

A jury in the Juvenile Court of the District of Columbia found petitioner to be the father of three children born out of wedlock on November 4, 1945, February 14, 1950, and May 17, 1951, respectively, and an order was entered requiring him to support the children (App'nt. 4, 8, 13) (App'ee. 8).[3]

At the commencement of the proceeding, the trial court, during an examination of the jury on voir dire, outlined the background, history, and purpose of the Act,[4] without objection by the petitioner (App'nt. 5).

Then followed testimony by the complaining witness in substance that commencing in 1940 she and petitioner maintained a continuing sexual relationship until about June 1951 (App'ee. 3-5), that during that period she did not have sexual relations with any other person, and that as the result of sexual relations with petitioner during the months of January and February, 1945, April and May 1949, and July and August 1950, the three children in question were born (App'ee. 5-6). There was further testimony that petitioner

[3] (App'ee.) refers to appendix to respondent's brief below.
[4] See footnote 2.

furnished clothing and food for the two older children and otherwise provided for their support until the month of June, 1952 (App'nt. 15-17) (App'ee. 6-8).

Petitioner did not take the stand in his own defense. The court, in its instructions to the jury, made no reference to petitioner's failure to take the stand in his own defense (App'nt. 25-31) and, after a verdict was returned against the petitioner, judgment was entered thereon (App'ee. 8).

On appeal to the Municipal Court of Appeals, petitioner complained of the introductory remarks of the trial court to the jury. The Municipal Court of Appeals in its opinion said that petitioner, having failed to raise the point at the trial, could not be heard to raise it on appeal; and that, in any event, it was clear from the record that petitioner had not been prejudiced by the remarks. The court said that there was substantial evidence that the petitioner had contributed to the support of the two older children within a year prior to the commencement of the action. The court then disposed of petitioner's contention that the trial judge erred in failing to instruct the jury concerning his failure to take the stand saying that no such instruction had been requested. The Municipal Court of Appeals concluded that the remaining assignments of error were without merit and, accordingly, affirmed the judgment of the trial court.

The United States Court of Appeals for the District of Columbia Circuit allowed an appeal and affirmed on the basis of the opinion and judgment of the Municipal Court of Appeals. Thereafter, a petition for rehearing in banc was denied.

SUMMARY OF THE ARGUMENT

The statutory provisions relating to children born out of wedlock are applicable solely to the District of Columbia; and the United States Court of Appeals for the District of Columbia Circuit having decided, on the basis of the opinion of the Municipal Court of Appeals for the District of Co-

lumbia, that no error affecting the substantial rights of petitioner was apparent in the record, no question is now presented which calls for the exercise of the jurisdiction of this Court to review on writ of certiorari.

ARGUMENT

This Court should not exercise jurisdiction to review the judgment of the United States Court of Appeals for the District of Columbia Circuit because the matters involved arose out of the enforcement of a law of purely local application.

The matters involved in the proceedings below arose out of the enforcement of the Act of Congress "Relating to Children Born Out of Wedlock"[5] in the District of Columbia.

This Court has repeatedly said that it will not ordinarily review decisions of the courts of the District of Columbia based upon or construing statutes limited in their application to, or which declare the common law of, the District of Columbia. *American Security & T. Co.* v. *District of Columbia*, 224 U. S. 491, 32 S. Ct. 553, 56 L. Ed. 856; *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285, 56 S. Ct. 190, 80 L. Ed. 229; *District of Columbia* v. *Pace*, 320 U. S. 698, 702, 64 S. Ct. 406, 88 L. Ed. 408; *United Surety Company* v. *American Fruit Product Company*, 238 U. S. 140, 35 S. Ct. 828, 59 L. Ed. 408; *Fisher* v. *United States*, 328 U. S. 463, 66 S. Ct. 1318, 90 L. Ed. 1382, 166 A. L. R. 1176; *Griffith* v. *United States*, 336 U. S. 704, 718, 69 S. Ct. 814, 93 L. Ed. 993, rehear. den. 337 U. S. 921, 69 S. Ct. 1152, 93 L. Ed. 1730.

The reason assigned by this Court for declining to review such cases is that matters relating to law enforcement in the District of Columbia are entrusted to local courts and that only where egregious error has been committed will the Supreme Court exercise its jurisdiction to review on writ of certiorari.

Although it is crystal clear from the record that this case was decided at the trial level on disputed issues of fact,

[5] See footnote 2.

petitioner contends here, as he did below, that serious questions of general public importance arose out of the conduct of the trial which were not resolved by the courts below and which now require review and resolution by this Court.

In this connection, petitioner contends first that the statements made by the trial court during examination of the jury on their voir dire were prejudicial. But, as noted by the Municipal Court of Appeals, no such point was raised at the trial and for that reason the point could not be considered on appeal. *McQuaid* v. *United States*, 91 U. S. App. D. C. 229, 198 F. 2d 987; *Depina* v. *United States*, 78 U. S. App. D. C. 31, 137 F. 2d 673. The Municipal Court of Appeals then held that even if objection had been interposed the statement could not be regarded as prejudicial.

Petitioner's next contention is that the trial court committed error when it failed to instruct the jury respecting the petitioner's failure to testify in his own behalf. In answer to this contention, it is enough to say, as the Municipal Court of Appeals said (App'ee. 10), that no such instruction was requested. See *Smith* v. *United States*, 72 App. D. C. 157, 112 F. 2d 217. Compare *Bruno* v. *United States*, 308 U. S. 287, 60 S. Ct. 198, 84 L. Ed. 257, a criminal matter, where such instruction was requested but not given. See also Rule X of the Rules of the Juvenile Court in the appendix hereto.

Petitioner's final contention is that the courts below failed to decide whether proceedings to determine the paternity of children born out of wedlock are criminal or civil. On other occasion, the United States Court of Appeals for this Circuit has declared that such proceedings are quasi-criminal. *Thomas* v. *United States*, 74 App. D. C. 167, 121 F. 2d 905; *Peak* v. *Calhoun*, 63 App. D. C. 113, 69 F. 2d 989.

Inasmuch as there was no showing in the record that petitioner had been deprived of any right to which he was entitled, it was immaterial in the consideration of the questions presented to the United States Court of Appeals for this Circuit whether such proceedings were civil or criminal.

Under the circumstances, it was unnecessary for the court below to reach the question.

In view of the foregoing, this case is manifestly not of the class of cases contemplated by Rule 19 (b) of the Rules of this Court requiring review by the Supreme Court on writ of certiorari.

CONCLUSION

For the foregoing reasons, the respondent respectfully submits that the petition for writ of certiorari to the United States Court of Appeals for the District of Columbia should be denied.

Respectfully submitted,

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